

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



September 16, 2003

Regulation Package #0902-23

CDSS MANUAL LETTER NO. CCL-03-05

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22, DIVISION 6,
CHAPTER 8, RESIDENTIAL CARE FACILITIES FOR THE ELDERLY

Regulation Package #0902-23**Effective 7/16/03****Sections 87101, 87219, 87219.1, 87454, 87565, and 87566**

This manual letter has been posted on the Office of Regulations Development website at http://www.dss.cahwnet.gov/ord/Residentia_635.htm.

Currently, the Community Care Licensing Division (CCL) of the California Department of Social Services (CDSS) has regulations in place that apply to all community care facilities (Division 6) and to all child care centers (Division 12). The regulations amend the current CCL regulations by amending the applicable existing Definition; Criminal Record Clearance; Criminal Record Exemption; and Personnel Record Sections throughout Division 6, Chapters 1, 8, and 8.5 and Division 12, Chapters 1 and 3. The amendments are consistent with Health and Safety Code Sections 1522, 1522.1, 1568.09, 1569.17, 1596.871, and 1596.877, which were amended by Senate Bill (SB) 1984, Chapter 1267, Statutes of 1994. SB 1984 requires that the Department place into regulations existing policies and criteria, that have been used and refined for approximately 25 years, to evaluate criminal record exemption requests. Where necessary, regulations throughout all affected sections have been reworded and/or restructured for clarity and consistency.

The attached regulations contain the portion of the emergency regulations that pertain to Residential Care Facilities for the Elderly, Division 6, Chapter 8.

These regulations were adopted on an emergency basis effective July 16, 2003 and will be considered at the Department's public hearing to be held on October 15, 2003.

FILING INSTRUCTIONS

All new revisions are indicated by a vertical line in the left margin. Revisions shown in graphic screen will continue to be shown in that manner until new revisions are done to those pages. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-03-04. The latest prior manual letter containing Residential Care Facilities for the Elderly regulation changes was Manual Letter No. CCL-02-13.

Page(s)

7.2
8.2 through 14.1
33 through 42.8
69 and 72
83 through 84.1

Replace(s)

Page 7.2
Pages 8.2 through 14.1
Pages 33 through 42
Pages 69 and 72
Pages 83 through 84.1

Attachments

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87101 DEFINITIONS (Continued)**87101**

- (6) Close friend. "Close friend" means a person who is attached to another by feelings of personal regard as indicated by both parties involved.
- (7) Co-locate. "Co-locate" means that a vendor applicant is approved for more than one program type, i.e., ARF, RCFE, GH, and has received approval to teach specific continuing education courses at the same time and at the same location. Co-location is allowed for Continuing Education Training Program vendors only.
- (8) Community Care Facility. "Community Care Facility" means any facility, place or building providing nonmedical care and supervision, as defined in Section 87101c.(2).
- (9) Complete request. "Complete request" means the vendor applicant has submitted, and the Department has received, all required information and materials necessary to approve or deny the request for certification program and/or course approval.
- (10) Conservator. "Conservator" means a person appointed by the Superior Court pursuant to the provisions of Section 1800 et seq. of the Probate Code or Section 5350 of the Welfare and Institutions Code, to care for the person, or estate, or person and estate, of another.
- (11) Consultant. "Consultant" means a person professionally qualified by training and experience to provide expert information on a particular subject.
- (12) Continuing Care Contract. "Continuing Care Contract" is defined in Health and Safety Code Section 1771(c)(8).

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“Continuing care contract” means a contract that includes a continuing care promise made, in exchange for an entrance fee, the payment of periodic charges, or both types of payments. A continuing care contract may consist of one agreement or a series of agreements and other writings incorporated by reference.”

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- (13) Continuing Education Training Program Vendor. "Continuing Education Training Program Vendor" means a vendor approved by the Department to provide continuing education training courses to residential care facility for the elderly administrators and certificate holders to qualify them for renewal of their residential care facility for the elderly administrator certificate.

87101 DEFINITIONS (Continued)**87101**

- (14) Control of Property. "Control of Property" means the right to enter, occupy, and maintain the operation of the facility property within regulatory requirements. Evidence of control of property shall include, but is not limited to, the following:
- (A) A Grant Deed showing ownership; or
 - (B) The Lease Agreement or Rental Agreement; or
 - (C) A court order or similar document which shows the authority to control the property pending outcome of probate proceeding or estate settlement.
- (15) Conviction. "Conviction" means:
- (A) A criminal conviction in California; or
 - (B) Any criminal conviction of another state, federal, military or other jurisdiction, which if committed or attempted in California, would have been punishable as a crime in California.
- (16) Course. "Course" means either, (1) a quarter- or semester-long structured sequence of classroom instruction covering a specific subject, or (2) a one-time seminar, workshop, or lecture of varying duration.
- (17) Criminal Record Clearance. "Criminal Record Clearance" means an individual has a California Department of Justice clearance and an FBI clearance.

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"Department" means the State Department of Social Services.

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- (6) Department of Justice Clearance. "Department of Justice Clearance" means an individual has no felony or misdemeanor convictions reported by the California Department of Justice. However, the individual may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.
- (7) Dietitian. "Dietitian" means a person who is eligible for registration by the American Dietetic Association.
- (8) Director. "Director" is defined in Health and Safety Code, Section 1569.2(c).

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"Director" means the Director of the State Department of Social Services.

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- (9) Do-Not-Resuscitate (DNR) Form. "Do-Not-Resuscitate Form" means the pre-hospital do-not-resuscitate forms developed by the California Emergency Medical Services Authority and by other local emergency medical services agencies. These forms, when properly completed by a resident or (in certain instances) a resident's Health Care Surrogate Decision Maker, and by a physician, alert pre-hospital emergency medical services personnel to the resident's wish to forego resuscitative measures in the event of the resident's cardiac or respiratory arrest.
- (10) Documentation. "Documentation" means written supportive information including but not limited to the Licensing Report (Form LIC 809).
- (e) (1) Egress Alert Device..."Egress Alert Device" means a wrist band or other device which may be worn by a resident or carried on a resident's person, which triggers a visual or auditory alarm when the resident leaves the facility building or grounds.
- (2) Elderly Person. "Elderly Person" means, for purposes of admission into a residential care facility for the elderly, a person who is sixty (60) years of age or older.
- (3) Emergency Approval to Operate. "Emergency Approval to Operate" (EAO) means a temporary approval to operate a facility for no more than 60 days pending the issuance or denial of a license by the licensing agency.

87101 DEFINITIONS (Continued)**87101**

- (4) Evaluator. "Evaluator" means any person who is a duly authorized officer, employee or agent of the Department including any officer, employee or agent of a county or other public agency authorized by contract to license community care facilities.
- (5) Evidence of Licensee's Death. "Evidence of Licensee's Death" shall include, but is not limited to, a copy of the death certificate, obituary notice, certification of death from the decedent's mortuary, or a letter from the attending physician or coroner's office verifying the death of the licensee.
- (6) Exception. "Exception" means a variance to a specific regulation based on the unique needs or circumstances of a specific resident or staff person. Requests for exceptions are made to the licensing agency by an applicant or licensee. They may be granted for a particular facility, resident or staff person, but cannot be transferred or applied to other individuals.
- (7) Existing Facility. "Existing Facility" means any facility operating under a valid license on the date of application for a new license.
- (f) (1) Facility Hospice Care Waiver. "Facility Hospice Care Waiver" means a waiver from the limitation on retention of residents who require more care and supervision than other residents and residents who are bedridden other than for a temporary illness. The Hospice Care Waiver granted by the Department will permit the retention in a facility of a designated maximum number of terminally ill residents who are receiving hospice services from a hospice agency. The Facility Hospice Care Waiver will apply only to those residents who are receiving hospice care in compliance with a hospice care plan meeting the requirements of Section 87716.
- (2) Federal Bureau of Investigation (FBI) Clearance. "Federal Bureau of Investigation Clearance" means an individual has no felony or misdemeanor convictions reported by the FBI. The individual may also have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.
- (g) (1) Guardian. "Guardian" means a person appointed by the Superior Court pursuant to the provisions of Section 1500 et seq. of the Probate Code to care for the person, or person and estate, of another.
- (h) (1) Healing wounds include cuts, stage one and two dermal ulcers as diagnosed by a physician, and incisions that are being treated by an appropriate skilled professional with the affected area returning to its normal state. They may involve breaking or laceration of the skin and usually damage to the underlying tissues.
- (2) Health Care Provider. "Health Care Provider" means those persons described in Probate Code Section 4615: "a person who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or practice of a profession."

87101 DEFINITIONS (Continued)**87101**

- (3) Health Care Surrogate Decision Maker. "Health Care Surrogate Decision Maker" means an individual who participates in health care decision making on behalf of an incapacitated resident. Health care surrogate decision maker may be formally appointed (e.g., by the resident in a Durable Power of Attorney for Health Care or by a court in a conservatorship proceeding) or, in the absence of a formal appointment, may be recognized by virtue of a relationship with the resident (e.g., the resident's next of kin). The licensee or any staff member of the facility shall not be appointed health care surrogate decision maker.
- (4) Health Condition Relocation Order. "Health Condition Relocation Order" means written notice by the Department to a licensee requiring the relocation of a resident from a residential care facility for the elderly because the resident has a health condition which cannot be cared for within the limits of the license, requires inpatient care in a health facility or has a prohibited health condition as specified in Section 87701.
- (5) Home Economist. "Home Economist" means a person who holds a baccalaureate or higher degree in home economics and who specialized in either food and nutrition or dietetics.
- (6) Hospice or Hospice Agency. "Hospice or Hospice Agency" means an entity which provides hospice services to terminally ill persons, is Medicare certified for hospice, and holds either a Hospice license or a Home Health Agency license from the California Department of Health Services. Any organizations, appropriately skilled professionals, or other professional persons or entities that are subcontracted by the hospice or hospice agency for the provision of specified hospice services to the resident are included within the definition. The hospice agency providing services in an RCFE shall not subcontract with the licensee or any facility staff for the provision of services.
- (7) Hospice Care Plan. "Hospice Care Plan" means the hospice agency's written plan of care for a terminally ill resident. The hospice shall retain overall responsibility for the development and maintenance of the plan and quality of hospice services delivered.
- (i) (1) Immediate Need. "Immediate Need" means a situation where prohibiting the operation of the facility would be detrimental to a resident's physical health, mental health, safety, or welfare. Examples of immediate need include but are not limited to:
 - (A) A change in facility location when residents are in need of services from the same operator at the new location;
 - (B) A change of facility ownership when residents are in need of services from the new operator.

87101 DEFINITIONS (Continued)**87101**

- (2) Initial Certification Training Program Vendor. "Initial Certification Training Program Vendor" means a vendor approved by the Department to provide the initial forty (40) hour certification training program to persons who do not possess a valid residential care facility for the elderly administrator certificate.
- (3) Initial Vendor Application. "Initial Vendor Application" means the application form, LIC 9141, used to request approval from the Department to become a vendor for the first time.
- (4) Instruction: Means to furnish an individual with knowledge or to teach, give orders, or direction of a process or procedure.
- (5) Interdisciplinary Team. "Interdisciplinary Team" means a team that shall assist the Department in evaluating the need for relocating a resident of a residential care facility for the elderly when the resident has requested a review of the Department's health-condition relocation order. This team shall consist of the Department's nurse consultant and a social worker, designated by the Department, with experience in the needs of the elderly. Persons selected for an interdisciplinary team review shall not have been involved in the initial decision to issue a relocation order for the resident in question.
- (j) (Reserved)
- (k) (Reserved)
- (l) (1) License. "License" is defined in Health and Safety Code Section 1569.2(g).

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- (A) Health and Safety Code Section 1569.2(g) reads:

"License" means a basic permit to operate a residential care facility for the elderly.

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87101 DEFINITIONS (Continued)**87101**

- (2) Licensee. "Licensee" means the individual, firm, partnership, corporation, association or county having the authority and responsibility for the operation of a licensed facility.
- (3) Licensing Agency. "Licensing Agency" means a state, county or other public agency authorized by the Department to assume specified licensing, approval or consultation responsibilities pursuant to Section 1569.13 of the Health and Safety Code.
- (4) Repealed by Manual Letter No. CCL-02-09, effective 8/31/02.
- (m) (1) Medical Professional. "Medical Professional" means an individual who is licensed or certified in California to perform the necessary medical procedures within his/her scope of practice. This includes, but is not limited to, Medical Doctor (MD), Registered Nurse (RN) and Licensed Vocational Nurse (LVN).
- (n) (1) New Facility. "New Facility" means any facility applying for an initial license whether newly constructed or previously existing for some other purpose.
- (2) Nonambulatory Person. "Nonambulatory Person" means a person who is unable to leave a building unassisted under emergency conditions. It includes, but is not limited to, those persons who depend upon mechanical aids such as crutches, walkers, and wheelchairs. It also includes persons who are unable, or likely to be unable, to respond physically or mentally to an oral instruction relating to fire danger and, unassisted, take appropriate action relating to such danger.
- (3) Nutritionist. "Nutritionist" means a person holding a master's degree in food and nutrition, dietetics, or public health nutrition, or who is employed by a county health department in the latter capacity.
- (o) (Reserved)
- (p) (1) Physician. "Physician" means a person licensed as a physician and surgeon by the California Board of Medical Examiners or by the California Board of Osteopathic Examiners.
- (2) Placement Agency. "Placement Agency" as defined in Health and Safety Code Section 1569.47(a), means any county welfare department, county social services department, county mental health department, county public guardian, general acute care hospital discharge planner or coordinator, state-funded program or private agency providing placement or referral services, and regional center for persons with developmental disabilities which is engaged in finding homes or other places for the placement of elderly persons for temporary or permanent care.

87101 DEFINITIONS (Continued)**87101**

- (3) "PRN Medication" (pro re nata) means any nonprescription or prescription medication which is to be taken as needed.
- (4) Provision or Provide. Whenever any regulation specifies that provision be made for or that there be provided any service, personnel or other requirement, it means that if the resident is not capable of doing so himself, the licensee shall do so directly or present evidence satisfactory to the licensing agency of the particular arrangement by which another provider in the community will do so.
- (5) Provisional License. "Provisional License" means a temporary, nonrenewable license, issued for a period not to exceed twelve months which is issued in accordance with the criteria specified in Section 87231.

(q) (Reserved)

- (r) (1) Rehabilitation. "Rehabilitation" means that period of time, together with any education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service, which assist an individual in reestablishing good character.
- (2) Relative. "Relative" means spouse, parent, stepparent, son, daughter, brother, sister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any such person denoted by the prefix "grand" or "great", or the spouse of any of the persons specified in this definition, even if the marriage has been terminated by death or dissolution.
- (3) Renewal Vendor Application. "Renewal Vendor Application" means the application form, LIC 9141, used to request approval from the Department to continue another two (2) years as an approved vendor.
- (4) Request to Forego Resuscitative Measures. A "Request to Forego Resuscitative Measures" is defined in Probate Code Section 4753(b).

87101 DEFINITIONS (Continued)

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- (A) Probate Code Section 4753(b) reads:

A "request to forego resuscitative measures" shall be a written document, signed by the individual, or a legally recognized surrogate health care decisionmaker and a physician and surgeon, that directs a health care provider to forego resuscitative measures. For the purpose of this section, a "request to forego resuscitative measures" shall include a prehospital "do not resuscitate" form as developed by the Emergency Medical Services Authority or other substantially similar form. A request to forego resuscitative measures may also be evidenced by a medallion engraved with the words "do not resuscitate" or the letters "DNR", a patient identification number, and a 24-hour toll-free telephone number, issued by a person pursuant to an agreement with the Emergency Medical Services Authority.

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- (5) Residential Care Facility for the Elderly. "Residential Care Facility for the Elderly" means a housing arrangement chosen voluntarily by the resident, the resident's guardian, conservator or other responsible person; where 75 percent of the residents are sixty years of age or older and where varying levels of care and supervision are provided, as agreed to at time of admission or as determined necessary at subsequent times of reappraisal. Any younger residents must have needs compatible with other residents.
- (6) Responsible Person. "Responsible Person" means that individual or individuals, including a relative, health care surrogate decision maker, or placement agency, who assist the resident in placement or assume varying degrees of responsibility for the resident's well-being.
- (7) Room and Board. "Room and Board" means a living arrangement where care and supervision is neither provided nor available.
- (s) (1) Serious Deficiency. "Serious Deficiency" means any deficiency that presents an immediate or substantial threat to the physical health, mental health, or safety of the residents or clients of a community care facility.
- (2) Shall. "Shall" means mandatory. "May" means permissive.

87101 DEFINITIONS (Continued)**87101**

- (3) Significant Other. "Significant Other" means a person, including a person of the same gender, with whom a resident was sharing a partnership prior to his/her placement in a Residential Care Facility for the Elderly (RCFE). The partnership involves two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.
- (4) Simplified Exemption. "Simplified Exemption" means an exemption granted on the Department's own motion, as authorized in Health and Safety Code Section 1569.17(c)(4), if the individual's criminal history meets specific criteria established by Department regulation.
- (5) Singular-Plural. Whenever in these regulations the singular is used, it can include the plural.
- (6) Social Worker. "Social Worker" means a person who has a graduate degree from an accredited school of social work or who has equivalent qualifications as determined by the Department.
- (7) SSI/SSP. "SSI/SSP" means the Supplemental Security Income/State Supplemental Program.
- (8) Standard Precautions. See "Universal Precautions."
- (9) Substantial Compliance. "Substantial Compliance" means the absence of any deficiencies which would threaten the physical health, mental health, safety or welfare of the residents. Such deficiencies include, but are not limited to, those deficiencies referred to in Section 87451 and the presence of any uncorrected serious deficiencies for which civil penalties could be assessed.
- (10) Supervision. "Supervision" means to oversee or direct the work of an individual or subordinate but does not necessarily require the immediate presence of the supervisor.
- (t) (1) Terminally Ill Resident. "Terminally Ill Resident" means that the resident has a prognosis by his/her attending physician that the resident's life expectancy is six months or less if his/her illness or condition runs its normal course.
- (2) Transfer trauma. "Transfer trauma" means the consequences of the stress and emotional shock caused by an abrupt, involuntary relocation of a resident from one facility to another.

87101 DEFINITIONS (Continued)**87101**

- (u) (1) Universal Precautions. "Universal Precautions" means an approach to infection control that treats all human blood and body fluids as if they are infectious. Generally, universal precautions consist of regular hand washing after coming into contact with another person's body fluids (mucous, saliva, urine, etc.) and includes use of gloves when handling blood or body fluids that contain blood. Specifically, universal precautions consist of the following four basic infection control guidelines:
- (A) Hand washing - Staff should wash their hands in the following situations, but not limited to these situations:
1. After assisting with incontinent care or wiping a resident's nose.
 2. Before preparing or eating food.
 3. After using the toilet.
 4. Before and after treating or bandaging a cut.
 5. After wiping down surfaces, cleaning spills, or any other housekeeping.
 6. After being in contact with any body fluids from another person, even if they wore gloves during contact with body fluids.
- (B) Gloves
1. Use gloves only one time, for one incident or resident.
 - (i) Air dry the hands or dry the hands on a single-use paper towel prior to putting on a new pair of gloves.
 - (ii) Dispose of used gloves immediately after use.
 2. Staff should always wear gloves in the following situations, but not limited to these situations:
 - (i) When they come into contact with blood or body fluids.
 - (ii) When they have cuts or scratches on their hands.
 - (iv) When administering first aid for a cut, a bleeding wound, or a bloody nose.

87101 DEFINITIONS (Continued)**87101**

- (C) Cleaning with a disinfectant - Staff should clean with a disinfectant:
1. On all surfaces and in the resident's room and on an "as needed" basis on any surface that has come into contact with blood.
 2. Such as a basic bleach solution, made fresh daily by mixing 1/4 cup household liquid chlorine bleach in one gallon of tap water, or one tablespoon bleach in one quart of water.
- (D) Proper disposal of infectious materials - Staff should dispose of infectious materials by placing them in a plastic trash bag, tying the bag with a secure tie, and disposing of it out of reach of residents and children.
- (2) "Unlicensed Residential Facility for the Elderly" means a facility as defined in Health and Safety Code Section 1569.44.

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- (A) Health and Safety Code Section 1569.44 provides in part:

A facility shall be deemed to be an "unlicensed residential care facility for the elderly" and "maintained and operated to provide residential care" if it is unlicensed and not exempt from licensure, and any one of the following conditions is satisfied:

- (1) The facility is providing care and supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.
- (2) The facility is held out as, or represented as, providing care and supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.
- (3) The facility accepts or retains residents who demonstrate the need for care and supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.
- (4) The facility represents itself as a licensed residential facility for the elderly.

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87218 APPLICATION FOR LICENSE (Continued)**87218**

- (15) Information concerning insurance carried by the applicant relating to the operation of the facility.
 - (16) Plan of Operation as specified in Section 87222.
 - (17) The fee for processing the application for the requested capacity as specified in Section 87224.
 - (18) Name, address and telephone number of the city or county fire department, the district providing fire protection services, or the State Fire Marshal's Office having jurisdiction in the area where the facility is located.
 - (19) Such other information as may be required by the licensing agency for the proper administration and enforcement of the licensing law and regulations.
- (b) An application shall be filed with the licensing agency which serves the area in which the facility is located.

NOTE: Authority cited: Sections 1569.18, 1569.23(d), 1569.30, and 1569.616(j), Health and Safety Code.
Reference: Sections 1569.1, 1569.2, 1569.5, 1569.10, 1569.15, 1569.151, 1569.1515(a), 1569.16, 1569.17, 1569.175, 1569.18, 1569.185, 1569.19, 1569.20, 1569.21, 1569.22, 1569.23, 1569.24, 1569.30, 1569.312, 1569.45, 1569.60, 1569.615, 1569.616, and 1569.62, Health and Safety Code.

87219 CRIMINAL RECORD CLEARANCE**87219**

- (a) The Department shall conduct a criminal record review of all individuals specified in Health and Safety Code Section 1569.17 and shall have the authority to approve or deny a facility license, or employment, residence, or presence in the facility, based upon the results of such review.
- (b) Prior to the Department issuing a license, the applicant, administrator and any adults other than a client, residing in the facility shall have a criminal record clearance or exemption.

87219 CRIMINAL RECORD CLEARANCE (Continued)

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- (1) Section 1569.17(a) of the Health and Safety Code provides in part:

Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5 subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. The following shall apply to the criminal record information.

- (A) If the California Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).
- (B) If the California Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the California Department of Social Services shall cease processing the application until the conclusion of the trial.
- (C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the California Department of Social Services with a statement of that fact.
- (D) If the California Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).
- (E) An applicant and any person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a).

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87219 CRIMINAL RECORD CLEARANCE (Continued)**87219**

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- (2) Section 1569.17(b) of the Health and Safety Code provides in part:

In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

- (A) Adults responsible for administration or direct supervision of staff.
- (B) Any person, other than a client, residing in the facility. Residents of unlicensed independent senior housing facilities that are located in contiguous buildings on the same property as a residential care facility for the elderly shall be exempt from these requirements.
- (C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for the elderly. The facility shall maintain the copy of the certification on file as long as the care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for the elderly pursuant to Section 1569.58.
- (D) Any staff person or employee who has contact with the clients.
- (E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in a similar capacity.
- (F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

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87219 CRIMINAL RECORD CLEARANCE (Continued)

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HANDBOOK CONTINUES

(3) The following individuals are exempt from requirements applicable under paragraph (1):

- (A) A medical professional, as defined in Section 87101(m)(1), who holds a valid license or certification from the individual's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee, if all of the following apply:
 - (i) The criminal record of the individual has been cleared as a condition of licensure or certification by the individual's California medical care regulatory entity.
 - (ii) The individual is providing time-limited specialized clinical care or services.
 - (iii) The individual is providing care or services within the individual's scope of practice.
 - (iv) The individual is not a community care facility licensee or an employee of the facility.
- (B) A third-party repair person, or similar retained contractor, if all of the following apply:
 - (i) The individual is hired for a defined, time-limited job.
 - (ii) The individual is not left alone with clients.
 - (iii) When clients are present in the room in which the repair person or contractor is working, a staff person who has a criminal record clearance or exemption is also present.
- (C) A third-party contractor or other business professional, if all of the following apply:
 - (i) The individual is retained by a client.
 - (ii) The individual is at the facility at the request or by permission of that client.
 - (iii) The individual is not left alone with other clients.

HANDBOOK CONTINUES

87219 CRIMINAL RECORD CLEARANCE (Continued)**87219**

HANDBOOK CONTINUES

- (D) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client of the facility, and are in the facility at the request of that client or client's legal decision maker.
 - (i) The exemption shall not apply to an individual who is a community care facility licensee or an employee of the facility.
- (E) Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual client at the request of, or with the permission of, the client.
 - (i) This exemption shall not apply to an individual who is a community care facility licensee or an employee of the facility.
- (F) Members of fraternal, service and similar organizations who conduct group activities for clients, if all of the following apply:
 - (i) Members are not left alone with the clients.
 - (ii) Members do not transport clients off the facility premises.
 - (iii) The same group does not conduct such activities more often than once a month.
- (G) A volunteer, if all of the following apply:
 - (i) The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.
 - (ii) The volunteer is never left alone with clients.
 - (iii) The volunteer does not provide any client assistance with dressing, grooming, bathing or personal hygiene.
 - (iv) The volunteer is at the facility during normal waking hours.
 - (v) The volunteer spends no more than 16 hours per week at the facility.

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87219 CRIMINAL RECORD CLEARANCE (Continued)**87219**

(H) The following individuals unless contraindicated by the client's needs and service plan:

(i) A spouse, significant other, relative, or close friend of a client.

(ii) An attendant or facilitator if the attendant or facilitator is not employed, retained or contracted by the licensee.

(iii) The exemptions in Section 87219(b)(3)(H)(i) or (ii) apply only if the individual is visiting the client or providing direct care and supervision to that client only.

(HI) Nothing in this paragraph shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(4) Section 1569.17(e) of the Health and Safety Code provides in part:

The California Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident or arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.

(5) Section 1569.17(a)(5) of the Health and Safety Code states in part:

An applicant and any person specified in subdivision (b) of the Health and Safety Code Section 1569 shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a). If an applicant meets all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and individuals listed in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person described in subdivision (b) has a criminal record, the license may be revoked pursuant to Health and Safety Code Section 1569.50. The department may also suspend the license pending an administrative hearing pursuant to Health and Safety Code Sections 1569.50 and 1569.51.

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- (c) A licensee or applicant for a license may request a transfer of a criminal record clearance from one state licensed facility to another, or from TrustLine to a state licensed facility by providing the following documents to the Department:
- (1) A signed Criminal Background Clearance Transfer Request, LIC 9182 (Rev. 4/02).
 - (2) A copy of the individual's:
 - (A) Driver's license, or
 - (B) Valid identification card issued by the Department of Motor Vehicles, or
 - (C) Valid photo identification issued by another state or the United States government if the individual is not a California resident.
 - (3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

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- (4) Section 1569.17(g) of the Health and Safety Code states:

The California Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred.

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- (d) All individuals subject to criminal record review shall be fingerprinted and sign a Criminal Record Statement (LIC 508 [Rev. 1/03]) under penalty of perjury.
- (1) A person signing the LIC 508 must:
 - (A) Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 87219(h).
 - (B) If convicted of a crime other than a minor traffic violation as specified in Section 87219(h), provide information regarding the conviction.

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- (2) If the signed statement indicates a conviction for any crime other than a minor traffic violation for which the fine was \$300 or less, the licensee shall immediately notify the Department and the Department will take appropriate action as specified in Section 87219(f). The Department shall take the same actions as would be taken in Health and Safety Code Section 1569.17(c) if a criminal record transcript had been received.
- (3) The license shall submit these fingerprints to the California Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or comply with Section 87219(c), prior to the individual's employment, residence, or initial presence in the community care facility.
 - (A) Fingerprints shall be submitted to the California Department of Justice by the licensee or sent by electronic transmission to the California Department of Justice by a fingerprinting entity approved by the California Department of Social Services.
 - (B) A licensee or an applicant for a license may not submit, or enable another to submit under the licensee's or the applicant's authority, the fingerprints of any person who does not, or whom the licensee or applicant reasonably believes will not reside, provide care and supervision to, or have contact with clients at the licensee's or applicant's facility.
 - 1. If the Department determines that the licensee or applicant has violated Section 87219(d), the Department may immediately cease processing criminal record and Child Abuse Central Index clearances for the facility until the licensee or applicant complies with this section or a disciplinary proceeding is completed.
- (e) Prior to employment, residence or initial presence in the facility, all individuals subject to a criminal record review shall:
 - (1) Obtain a Department of Justice clearance or a criminal record exemption as required by the Department or
 - (2) Request a transfer of a criminal record clearance as specified in Section 87219(c) or
 - (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87219.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.

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- (f) Violation of Section 87219(e) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars (\$100) per violation by the Department.
 - (1) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1569.49.
- (g) Violation of Section 87219(e) may result in a denial of the license application or suspension and/or revocation of the license.
- (h) If the criminal record transcript of any of the individuals specified in Health and Safety Code Section 1569.17(b) discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for any crime other than a minor traffic violation for which the fine was less than \$300 and an exemption pursuant to Section 87219.1(a) has not been granted, the Department shall take the actions specified in Health and Safety Code Section 1569.17(c).
 - (1) For an initial applicant, the Department may deny the application.
 - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - (3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1569.58 and deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.
 - (4) For individuals residing in the facility, including spouses of the applicant, licensee, or employee, exclusion of the affected individual pursuant to Health and Safety Code Section 1569.58 and denial of the application or revocation of the license, if the individual continues to provide services and/or reside in the facility.

87219 CRIMINAL RECORD CLEARANCE (Continued)**87219**

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- (5) Section 1569.17(c)(4) of the Health and Safety Code provides in part:

If it is determined by the California Department of Social Services on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a or 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the California Department of Social Services shall notify the licensee in writing within 15 calendar days of receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential community care facility. The California Department of Social Services may subsequently grant an exemption pursuant to subdivision (f).

- (A) Section 243.4 of the Penal Code provides in part:

1. Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.
2. Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.

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87219 CRIMINAL RECORD CLEARANCE (Continued)

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(B) Section 273a of the Penal Code provides:

1. Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer or inflicts thereon unjustifiable physical pain or mental suffering or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not to exceed one year, or in the state prison for 2, 3, or 4 years.
2. Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

(C) Section 273d of the Penal Code provides:

1. Any person who willfully inflicts upon any child cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 4, or 6 years, or in the county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both.

(D) Section 368 of the Penal Code provides:

1. Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

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87219 CRIMINAL RECORD CLEARANCE (Continued)

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2. Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health may be endangered, is guilty of a misdemeanor.

(6) Section 1569.17(c) of the Health and Safety Code provides in part:

- (A) If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the California Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the community care facility; (2) seek an exemption pursuant to subdivision (g). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered by the department.

(7) Section 1569.17(h) of the Health and Safety Code provides:

If the licensee or facility is required by law to deny employment or to terminate employment of any employee based written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1569.58, the licensee or the facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

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- (i) The Department shall notify the licensee and the affected individual associated with the facility, in concurrent, separate letters, that the affected individual has a criminal conviction and needs to obtain a criminal record clearance.

87219 CRIMINAL RECORD CLEARANCE (Continued)**87219**

- (j) The license shall maintain documentation of criminal record clearances or criminal record exemptions of employees in the individual's personnel file as required in Section 87566.
- (k) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of volunteers that require fingerprinting and non-client adults residing in the facility.
 - (1) Documentation shall be available at the facility for inspection by the Department.
- (l) Any individual who is required to obtain or has obtained a criminal record clearance or exemption as a condition of association with, or licensure of, a facility shall report to the Department by telephone any subsequent arrest, conviction, or parole or probation violation within 48 hours of the event.
 - (1) Confirmation of the telephone report must be made in writing to the Department within seven calendar days. The written report shall include the following:
 - (A) The law enforcement agency and court involved;
 - (B) A detailed description of the events leading to the arrest, conviction, or parole or probation violation;
 - (C) The individual's current and pending legal involvement; and
 - (D) The individual's current address and phone number.
- (m) The Department may seek verification of an individual's criminal record as reported to the Department from any member of the public or affected individual.
 - (1) Upon obtaining confirmation of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Section 1569.17, Health and Safety Code; and Section 42001, Vehicle Code.

87219.1 CRIMINAL RECORD EXEMPTION**87219.1**

- (a) The Department will notify a licensee to act immediately to terminate the employment of, remove from the facility or bar from entering the facility any person described in Sections 87219.1(a)(1) through (5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice.
- (1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;
 - (2) Any person who has been convicted of a felony;
 - (3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1569.17(c)(3);
 - (4) Any person who has been convicted of any crime specified below:
 - (A) Battery
 - (B) Shooting at Inhabited Dwelling
 - (C) Corporal Injury on Spouse/Cohabitant
 - (D) Discharging Firearm with Gross Negligence
 - (E) Exhibiting Weapon/Firearm
 - (F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death
 - (G) Criminal Threat to Harm or Injure Another Person
 - (H) Cruelty to Animals
 - (I) Willful Harm or Injury to Child; or
 - (5) Any other person ordered to be removed by the Department.

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

- (b) In addition to the requirements of Section 87219.1(a), the licensee must return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility.
 - (1) Confirmation must be made on either a Removal Confirmation – Exemption Needed, LIC 300A (Rev. 12/02), Removal Confirmation - Denial, LIC 300B (Rev. 12/02), Removal Confirmation - Rescinded, LIC 300C (Rev. 12/02), or Removal Confirmation - Nonexemptible, LIC 300D (Rev. 12/02).
- (c) After a review of the criminal record transcript, the Department may grant an exemption if:
 - (1) The applicant/licensee requests an exemption in writing for himself or herself, or
 - (2) The applicant/licensee requests an exemption in writing for an individual associated with the facility, or
 - (3) The applicant/licensee chooses not to seek an exemption on the affected individual's behalf, the affected individual requests an individual exemption in writing, and
 - (4) The affected individual presents substantial and convincing evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued or maintaining a license, employment or residence in a licensed facility.
- (d) To request a criminal record exemption, individuals must submit information that indicates that he/she meets the requirements of Section 87219.1(c)(4). The Department will send a written notice to the licensee or license applicant that lists the information that must be submitted to request a criminal record exemption. The information must be submitted within thirty (30) days of the date of the Department's notice.
 - (1) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing any information requested by the Department to process the exemption request, pursuant to Section 87219.1(e).
 - (2) If the individual who requests a criminal record exemption is an employee or resident other than a spouse or dependent family member and does not submit the information requested in the Department's written notice within 30 days of the date of the notice, the Department may cease processing the exemption request and close the case.

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

- (3) If the individual who requests a criminal record exemption is an applicant, licensee, spouse or dependent family member, and does not submit the information requested in the Department's written notice within 30 days of the date of the notice, the Department may deny the exemption request.
- (e) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:
 - (1) The nature of the crime including, but not limited to, whether it involved violence or a threat of violence to others.
 - (2) Period of time since the crime was committed and number of offenses.
 - (3) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.
 - (4) Activities since conviction, such as employment or participation in therapy or education, that would indicate changed behavior.
 - (5) Granting by the Governor of a full and unconditional pardon.
 - (6) Character references.
 - (A) All character references shall be on a Reference Request form (LIC 301E - Exemptions [Rev. 9/02]).
 - (7) A certificate of rehabilitation from a superior court.
 - (8) Evidence of honesty and truthfulness as revealed in exemption application documents.
 - (A) Documents include, but are not limited to:
 - 1. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. 1/03]) and
 - 2. The individual's written statement/explanation of the conviction and the circumstances about the arrest.
 - (9) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department.

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

- (f) The Department shall also consider the following factors in evaluating a request for an exemption:
 - (1) Facility and type of association.
 - (2) The individual's age at the time the crime was committed.
- (g) The Department may deny an exemption request if:
 - (1) The licensee and/or the affected individual fails to provide documents requested by the Department, or
 - (2) The licensee and/or the affected individual fails to cooperate with the Department in the exemption process.
- (h) The reasons for any exemption granted or denied shall be in writing and kept by the Department.
- (i) The Department has the authority to grant a criminal record exemption that places conditions on the individual's continued licensure, and employment or presence in a licensed facility.
- (j) It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an exemption if the individual:
 - (1) Makes a knowingly false or misleading statement regarding:
 - (A) Material relevant to their application for a criminal record clearance or exemption,
 - (B) His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or
 - (C) His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or
 - (2) Is on probation or parole.
 - (A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding Section 87219.1(j)(2).

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

- (k) The Department shall consider granting a criminal record exemption if the individual's criminal history meets all of the applicable criteria specified in Sections 87219.1(k)(1) through (6) and the individual provides the Department with substantial and convincing evidence of good character as specified in Section 87219.1(c)(4). For purposes of this section, a violent crime is a crime that, upon evaluation of the code section violated and/or the reports regarding the underlying offense, presents a risk of harm or violence.
- (1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.
 - (2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (3) The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (6) The individual has not been convicted a violent felony.
 - (7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in Sections 87219.1(k)(1) through (5) above shall begin from the last date of conviction(s).
- (l) It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of an exemption if the individual fails to meet the requirements specified in Sections 87219.1(k)(1) through (6).

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

- (m) The Department shall not grant an exemption if the individual has a conviction for any offense specified in Section 1569.17(f)(1) of the Health and Safety Code.

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Health and Safety Code Section 1569.17(f)(1) provides that no exemption shall be granted if an individual has been convicted of any of the following offenses:

- (1) Penal Code Sections 136.1 and 186.22 – Gang related/Intimidation of witnesses or victims.
- (2) Penal Code Sections 187, 190 through 190.4 and 192(a) – Any murder/Attempted murder/Voluntary manslaughter.
- (3) Penal Code Section 203 – Any mayhem.
- (4) Penal Code Section 206 - Felony torture.
- (5) Penal Code Sections 207, 208, 209, 209.5, 210 – Kidnapping.
- (6) Penal Code Sections 211, 212.5, 213, 214 – Any robbery.
- (7) Penal Code Section 215 – Carjacking.
- (8) Penal Code Section 220 – Assault with intent to commit mayhem, rape, sodomy or oral copulation.
- (9) Penal Code Section 243.4 – Sexual battery.
- (10) Penal Code Section 261(a), (a)(1), (2), (3), (4) or (6) – Rape.
- (11) Penal Code Section 262(a)(1) or (4) – Rape of a spouse.
- (12) Penal Code Section 264.1 – Rape in concert.
- (13) Penal Code Section 266 – Enticing a minor into prostitution.

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87219.1 CRIMINAL RECORD EXEMPTION (Continued)

87219.1

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- (14) Penal Code Section 266c – Induce to sexual intercourse, etc. by fear or consent through fraud.
- (15) Penal Code Section 266h(b) – Pimping a minor.
- (16) Penal Code Section 266i(b) – Pandering a minor.
- (17) Penal Code Section 266j – Providing a minor under 16 for lewd or lascivious act.
- (18) Penal Code Section 267 – Abduction for prostitution.
- (19) Penal Code Section 269 – Aggravated assault of a child.
- (20) Penal Code Section 272 – Contributing to the delinquency of a minor (must involve lewd or lascivious conduct).
- (21) Penal Code Section 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] – Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.
- (22) Penal Code Section 273d – Willfully inflicting any cruel or inhuman corporal punishment or injury on a child.
- (23) Penal Code Section 285 – Incest.
- (24) Penal Code Section 286 – Sodomy.
- (25) Penal Code Section 288 – Lewd or lascivious act upon a child under 14.
- (26) Penal Code Section 288a – Oral copulation.
- (27) Penal Code Section 288.2 – Felony conviction for distributing lewd material to children.
- (28) Penal Code Section 288.5(a) – Continuous sexual abuse of a child.

HANDBOOK CONTINUES

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

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- (29) Penal Code Section 289 – Genital or anal penetration or abuse by any foreign or unknown object.
- (30) Penal Code Section 290(a) – All crimes for which one must register as a sex offender including attempts and not guilty by insanity.
- (31) Penal Code Section 311.2(b), (c) or (d) – Transporting or distributing child-related pornography.
- (32) Penal Code Section 311.3 – Sexual exploitation of a child.
- (33) Penal Code Section 311.4 – Using a minor to assist in making or distributing child pornography.
- (34) Penal Code Section 311.10 – Advertising or distributing child pornography.
- (35) Penal Code Section 311.11 – Possessing child pornography.
- (36) Penal Code Sections 314 paragraphs 1 or 2 – Lewd or obscene exposure of private parts.
- (37) Penal Code Section 347(a) – Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, reservoir or public water supply.
- (38) Penal Code Section 368– Elder or dependent adult abuse.
- (39) Penal Code Section 417(b) – Drawing, exhibiting or using a loaded firearm.
- (40) Penal Code Section 451(a) or (b) – Arson.
- (41) Penal Code Section 460(a) – First degree burglary if it is charged and proved that a non-accomplice was present in the residence during the burglary.
- (42) Penal Code Sections 186.22 and 518 – Gang related/Extortion.
- (43) Penal Code Section 647.6 or prior to 1988 former Section 647a – Annoy or molest a child under 18.

HANDBOOK CONTINUES

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

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- (44) Penal Code Section 653f(c) – Solicit another to commit rape, sodomy, etc.
- (45) Penal Code Sections 664/187 – Any attempted murder.
- (46) Penal Code Section 667.5(c)(7) – Any felony punishable by death or imprisonment in the state prison for life.
- (47) Penal Code Section 667.5(c)(8) – Enhancement for any felony which inflicts great bodily injury.
- (48) Penal Code Section 667.5(c)(13) – Enhancement for violation of Penal Code Section 12308, 12309 or 12310 – Exploding or igniting or attempting to explode or ignite any destructive device or explosive with intent to commit murder.
- (49) Penal Code Section 667.5(c)(14) - Any kidnapping – Penal Code Sections 207, 208, 209, 209.5 and 210.
- (50) Penal Code Section 667.5(c)(22) - Any violation of Penal Code Section 12022.53 – Enhancement for listed felonies where use of a firearm.
- (51) Penal Code Section 667.5(c)(23) – Use of weapon of mass destruction.
- (52) Business and Professions Code Section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

HANDBOOK ENDS HERE

- (n) The Department shall consider granting a simplified criminal record exemption if the individual has the criminal history profile outlined in Sections 87219.1(n)(1) through (4) below:
 - (1) The individual does not have a demonstrated pattern of criminal activity;
 - (2) The individual has no more than one conviction;
 - (3) The conviction is a misdemeanor and is a crime that is nonviolent and does not pose a risk of harm to an individual; and

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

- (4) It has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation.
- (o) At the Department's discretion, an individual who is otherwise eligible for a simplified exemption may be required to go through the standard exemption process if the Department determines such action will help to protect the health and safety of clients.
- (p) If the Department denies or cannot grant a criminal record exemption the Department shall:
 - (1) For initial applicants, deny the application.
 - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - (3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1569.58, deny the application or revoke the license if the individual continues to provide services and/or reside at the facility.
 - (4) For individuals residing in the facility or the licensee, exclude the affected individual pursuant to Health and Safety Code Section 1569.58, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.
- (q) If a request for an exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no exemption may be granted pursuant to Section 87219.1(m). If a request for an exemption has been denied based on a conviction of a crime for which no exemption may be granted, the individual shall be excluded for the remainder of the individual's life.
 - (1) If the Department determines during the review of an exemption request, that the individual was denied an exemption for a conviction of a crime for which an exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on an exemption denial, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code Section 11522 that was denied, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department denying the petition.

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

- (2) An exclusion order based solely upon a denied exemption shall remain in effect and the individual shall not be employed in or present in a licensed facility or certified home, unless either a petition or an exemption is granted.
 - (3) If an individual who has previously been denied an exemption re-applies after the relevant time period described in Section 87219.1(q)(1) above, the Department may, in its discretion, grant or deny the subsequent request for an exemption.
 - (4) If an individual submits a petition pursuant to Government Code Section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to work or be present in a facility, along with all information required of an individual requesting a criminal record exemption as provided in Section 87219.1. If it is determined, based upon information provided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.
- (r) A licensee or applicant for a license may request a transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department:
- (1) A signed Criminal Record Exemption Transfer Request, LIC 9188 (Rev. 3/02).
 - (2) A copy of the individual's:
 - (A) Driver's license, or
 - (B) Valid identification card issued by the Department of Motor Vehicles, or
 - (C) Valid photo identification issued by another state of the United States Government if the individual is not a California resident.
 - (3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

- (s) The Department may consider factors including, but not limited to, the following in determining whether or not to approve the transfer of an exemption from one facility to another:
 - (1) The basis on which the Department granted the exemption;
 - (2) The nature and frequency of client contact in the new position;
 - (3) The category of facility where the individual wishes to transfer;
 - (4) The type of clients in the facility where the individual wishes to transfer;
 - (5) Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations; or
 - (6) Whether the exemption meets current exemption laws or regulations.
- (t) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.
- (u) At the Department's discretion, an exemption may be rescinded if it is determined that:
 - (1) The exemption was granted in error, or
 - (2) The exemption does not meet current exemption laws or regulations, or
 - (3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

- (v) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct which is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:
 - (1) Violations of licensing laws or regulations;
 - (2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;
 - (3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or
 - (4) The individual is convicted of a subsequent crime.
- (w) If the Department rescinds an exemption the Department shall:
 - (1) Notify the licensee and the affected individual in writing; and
 - (2) Initiate the appropriate administrative action.
- (x) If the Department learns that an individual with a criminal record clearance or exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate the appropriate administrative action to protect the health and safety of clients.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Section 1569.17, Health and Safety Code; and Section 42001, Vehicle Code.

87452 DEFICIENCIES IN COMPLIANCE (Continued)**87452**

2. The number of residents affected.
 3. The availability of equipment or personnel necessary to correct the deficiency.
 4. The estimated time necessary for delivery and any installation of necessary equipment.
- (B) The evaluator shall require correction of the deficiency within 24 hours and shall specify on the notice the date by which the correction must be made whenever penalties are assessed pursuant to Sections 87454(c), (d) and (e).
- (C) The date for correcting a deficiency shall not be more than 30 calendar days following service of the notice of deficiency, unless the evaluator determines that the deficiency cannot be completely corrected in 30 calendar days. If the date for correcting the deficiency is more than 30 days following service of the notice of deficiency the notice shall specify action which must be taken within 30 calendar days to begin correction.
- (5) The amount of penalty which shall be assessed and the date the penalty shall begin if the deficiency is not corrected by the specific due date.
- (6) The address and telephone number of the licensing office responsible for reviewing notices of deficiencies for the area in which the facility is located.

NOTE: Authority cited: Section 1569.30 and 1569.49, Health and Safety Code. Reference: Sections 1569.30, 1569.31, 1569.312, 1569.315, 1569.335, 1569.485, 1569.49 and 1589.49, Health and Safety Code.

87453 FOLLOW-UP VISITS TO DETERMINE COMPLIANCE**87453**

- (a) A follow-up visit shall be conducted within 10 working days following the latest date of correction specified in the notice of deficiency, unless the licensee has demonstrated that the deficiency was corrected as required in the notice of deficiency. No penalty shall be assessed unless a follow-up visit is conducted.
- (b) If a follow-up visit indicates that a deficiency was not corrected on or before the date specified in the notice of deficiency, the evaluator shall issue a notice of penalty.
- (c) A notice of penalty shall be in writing and shall include:
- (1) The amount of penalty assessed, and the date the payment is due.
 - (2) The name and address of the agency responsible for collection of the penalty.

87453 FOLLOW-UP VISITS TO DETERMINE COMPLIANCE (Continued)**87453**

- (d) When an immediate penalty has been assessed pursuant to Sections 87454(c), (d), (e) and (f) and correction is made when the evaluator is present, a follow-up visit is not required.

NOTE: Authority cited: Section 1569.30 and 1569.49, Health and Safety Code. Reference: Sections 1569.33, 1569.335, 1569.35, 1569.485, and 1569.49, Health and Safety Code.

87454 PENALTIES**87454**

- (a) A penalty of \$50 per day, per cited violation, shall be assessed for all serious deficiencies that are not corrected by the date specified in the notice of deficiency, up to a maximum of \$150 per day.
- (b) Notwithstanding Section 87454(a) above, an immediate penalty of \$100 per cited violation shall be assessed if any individual required to be fingerprinted under Health and Safety Code Section 1569.17(b) has not obtained a Department of Justice clearance or a criminal record exemption, requested a transfer of a criminal record clearance or requested and be approved for a transfer of an exemption as specified in Section 87219(e) prior to the individual's employment, residence or initial presence in the facility.
- (1) Violation of Section 87219(e) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars (\$100) per violation by the Department.
- (A) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1569.17.
- (2) Progressive civil penalties specified in Sections 87454(d) and (e) shall not apply.
- (c) Notwithstanding Section 87454(a) above, an immediate penalty of \$150 per day shall be assessed for any of the following:
- (1) Sickness, injury or death of a client has occurred as a result of the deficiency.
- (d) When a facility is cited for a deficiency and violates the same regulation subsection within a 12-month period, the facility shall be cited and an immediate penalty of \$150 per cited violation shall be assessed for one day only. Thereafter a penalty of \$50 per day, per cited violation, shall be assessed until the deficiency is corrected.
- (e) When a facility that was cited for a deficiency subject to the immediate penalty assessment specified in Section 87454(d) above violates the same regulation subsection within a 12-month period of the last violation the facility shall be cited and an immediate penalty of \$1,000 per cited violation shall be assessed for one day only. Thereafter, a penalty of \$100 per day, per cited violation, shall be assessed until the deficiency is corrected.

87454	PENALTIES (Continued)	87454
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- (1) For purposes of Sections 87454(d) and (e) above, a regulation subsection is the regulation denoted by a lower-case letter after the main regulation number.

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An example of the same regulation subsection are Sections 87218(a)(2) and 87218(a)(5). Sections 87218(a) and 87218(b) are not the same regulation subsection.

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- (f) If any deficiency is not corrected by the date specified in the notice of deficiency, a penalty shall be assessed for each day following that date until compliance has been demonstrated.
- (1) Immediate penalty assessments as specified in (c), (d) and (e) above shall begin on the day the deficiency is cited.
- (g) If a licensee or his/her representative reports to the licensing agency that a deficiency has been corrected, the penalty shall cease as of the day the licensing agency receives notification that the correction was made.
- (1) If the deficiency has not been corrected, civil penalties shall continue to accrue.
- (2) If it can be verified that the correction was made prior to the date of notification, the penalty shall cease as of that earlier date.
- (h) If necessary, a site visit shall be made immediately or within five working days to confirm that the deficiency has been corrected.
- (i) If an immediate civil penalty is assessed and the deficiency is corrected on the same day, the penalty shall still be assessed for that day.
- (j) Unless otherwise ordered by the Department all penalties are due and payable upon receipt of notice for payment, and shall be paid only by check or money order made payable to the agency indicated in the notice.
- (k) The licensing agency shall have the authority to file a claim in a court of competent jurisdiction or to take other appropriate action for failure to pay penalties as specified in (j) above.

| NOTE: Authority cited: Sections 1569.30 and 1569.49, Health and Safety Code. Reference: Sections 1569.17, 1569.33, 1569.335, 1569.35, 1569.485, and 1569.49, Health and Safety Code.

87455 ADMINISTRATIVE REVIEW - GENERAL**87455**

- (a) A licensee or his/her representative may request in writing a review of a notice of deficiency, notice of penalty and/or health condition relocation order within 10 working days of receipt of the notice or order. This review shall be conducted by a higher level staff person other than the evaluator who issued the notice of deficiency, notice of penalty, and/or health condition relocation order.
- (1) Additional review requirements pertaining to Incidental Medical Services are specified in Section 87720.
- (b) If the reviewer determines that a notice of deficiency or notice of penalty was not issued in accordance with applicable statutes and regulations of the Department, he/she shall amend or dismiss the notice. In addition, the reviewer may extend the date specified for correction of a deficiency if warranted by the facts or circumstances presented to support a request for extension.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.30, 1569.33, 1569.335, 1569.35, 1569.485, 1569.49, and 1569.54, Health and Safety Code.

87565 PERSONNEL REQUIREMENTS - GENERAL (Continued)**87565**

- (g) Prior to employment or initial presence in the facility, all employees and volunteers subject to a criminal record review shall:
 - (1) Obtain a Department of Justice clearance or a criminal record exemption as required by law or Department regulations or
 - (2) Request a transfer of a criminal record clearance as specified in Section 87219(c) or
 - (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87219.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.
- (h) All services requiring specialized skills shall be performed by personnel qualified by training or experience in accordance with recognized professional standards.
- (i) Residents shall not be used as substitutes for required staff but may, as a voluntary part of their program of activities, participate in household duties and other tasks suited to the resident's needs and abilities.
- (j) Volunteers may be utilized but may not be included in the facility staffing plan. Volunteers shall be supervised.

NOTE: Authority cited: Sections 1569.30 and 1569.625, Health and Safety Code. Reference: Sections 1569.17, 1569.30, 1569.31, 1569.312, and 1569.625, Health and Safety Code; and Section 42001, Vehicle Code.

87566 PERSONNEL RECORDS**87566**

- (a) Personnel records shall be maintained on the licensee, administrator and each employee and shall contain the following information:
- (1) Employee's full name.
 - (2) Social Security number.
 - (3) Date of employment.
 - (4) Written verification that employee is at least 18 years of age, which shall include but not be limited to a copy of his birth certificate or driver's license.
 - (5) Home address and telephone number.
 - (6) Educational background.
 - (A) For administrators this shall include verification that he/she meets the educational requirements in Sections 87564(b) and (c).
 - (7) Past experience, including types of employment and former employers.

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- (A) Section 1569.17(b)(2) of the Health and Safety Code provides:

Any person, other than a client, residing in the facility.

- (B) Section 1569.17(c)(4) of the Health and Safety Code provides in part:

Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision.

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- (8) Type of position for which employed.
- (9) Termination date if no longer employed by the facility.
- (10) Reasons for leaving.

87566 PERSONNEL RECORDS (Continued)**87566**

- (11) A health screening as specified in Section 87565.
- (12) Hazardous health conditions documents as specified in Section 87565.
- (13) For employees that are required to be fingerprinted pursuant to Section 80019:
 - (A) A signed statement regarding their criminal record history.
 - (B) Documentation of either a criminal record clearance or a criminal record exemption.
- (b) Personnel records shall be maintained for all volunteers and shall contain the following:
 - (1) A health statement as specified in Section 87565(e).
 - (2) Health screening documents as specified in Section 87565(e).
 - (3) For volunteers that are required to be fingerprinted pursuant to Section 87219:
 - (A) A signed statement regarding their criminal record history.
 - (B) Documentation of either a criminal record clearance or a criminal record exemption.
- (c) For RCFE staff who assist with personal activities of daily living, there shall be documentation of at least ten (10) hours of initial training within the first four (4) weeks of employment, and at least four (4) hours of annual continuing education in one or more of the content areas as specified in Section 87565(c)(2).
- (d) The licensee shall maintain documentation that an administrator has met the certification requirements specified in Section 87564.2.
- (e) All personnel records shall be retained for at least three (3) years following termination of employment.
- (f) All personnel records shall be maintained at the facility and shall be available to the licensing agency for review.
 - (1) The licensee shall be permitted to retain such records in a central administrative location provided that they are readily available to the licensing agency at the facility upon request.
- (g) In all cases, personnel records shall demonstrate adequate staff coverage necessary for facility operation by documenting the hours actually worked.

NOTE: Authority cited: Sections 1569.30 and 1569.616(j), Health and Safety Code. Reference: Sections 1569.30, 1569.31, 1569.312, 1569.613, 1569.616, and 1569.625, Health and Safety Code.

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